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No. 20

In the Supreme Court of the United States

OCTOBER TERM, 1931

LETUS N. CROWELL, as Deputy Commissioner for the Seventh Compensation District of the United States Employees' Compensation Commission; and J. B. KNUDSEN, Petitioners,

vs.

CHARLES BENSON

BRIEF FOR THE PETITIONER, J. B. KNUDSEN

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vs.

CHARLES BENSON

BRIEF FOR THE PETITIONER, J. B. KNUDSEN

Petitioner, J. B. Knudsen, adopts the brief and argument filed by the Solicitor General in the case before this Court Numbered 19, and styled "Letus N. Crowell, as Deputy Commissioner for the Seventh Compensation District of the United States Employees' Compensation Commission, Petitioner, vs. Charles Benson;" and petitioner prays that this Court will consider said brief of the Solicitor General as filed on his behalf as well as on behalf of the Government.

Petitioner adds to the brief and argument of the Solicitor General, so adopted by him, the following:

THE CONGRESS MAY WITHIN THE ADMIRALTY GRANT OF JUDICIAL POWER IN THE CONSTITUTION, ENACT A MARITIME WORKERS' COMPENSATION ACT, INVESTING AN ADMINISTRATIVE OFFICER WITH POWER TO REACH CONCLUSIONS OF FACT IN PROCEEDINGS UNDER THAT ACT, BINDING UPON THE DISTRICT COURTS IF SUPPORTED BY ADEQUATE EVIDENCE.

SUMMARY OF THE ARGUMENT

The question before this Court relates solely to the procedural provisions of the Act. The makers of the Constitution were not concerned with fixing the jurisdiction of the lower courts of the general government as between Congress and the judiciary, much less with establishing the procedure of such courts. To reach the conclusion found by the courts below, it must be held that the Constitution denies the right of the Congress to fix the procedure of the lower federal courts in respect to the determination of facts. But even the states may in matters of mere local concern exclude the jurisdiction of the admiralty courts over cases, to which the jurisdiction otherwise would extend. However the power of the Congress in the maritime field is broad and paramount. By it the maritime law, from time to time, has been materially changed and altered, the jurisdiction of the lower Federal Courts defined and restricted, the procedure of the District

Courts sitting in admiralty defined and regulated. In fields of congressional activity, other than the maritime field, specific illustrations of the power of the Congress to restrict the jurisdiction in the first instance of the inferior Federal Courts, are found. That power has, by the decisions of this Court, in terms and effect, been held constitutionally exercised. The extension of judicial power of the United States to the cases enumerated in the Constitution is not confined to original jurisdiction. Jurisdiction, either original or appellate, may extend (save in certain cases before this Court) as Congress wills. There is no distinction in the congressional grants of judicial power between the field of maritime activity and other fields entrusted to the general government. If the Congress may restrict the jurisdiction of the inferior Federal Courts to limits beyond which those Courts had theretofore exercised jurisdiction, as respecting cases arising under the Constitution and laws of the United States, it may so limit cases within the admiralty and maritime jurisdiction. *A fortiori* Congress may in a proceeding under a maritime workers' compensation act, require determinations of fact in the first instance to be reached by an administrative officer.

ARGUMENT

The findings and conclusions of the lower courts, respecting the Constitutional inability of the Congress to authorize an administrative officer or board to reach conclusions of fact, binding if supported by adequate or sufficient evidence, in proceedings under the Longshore-

men's and Harbor Workers' Compensation act, do neither suggest nor even hint the invalidity of the substantive provisions of that enactment. Upon the contrary, the conclusions of the lower court indicate they considered that those provisions which change the maritime rule of liability of the employer to his servant, excluding fault as the basis of recovery, wipe out possible actions *in rem* according to the course of admiralty proceedings, and substitute a remedy according to the course of the common law, i.e., *in personam* (Sec. 18), were constitutionally enacted. Indeed, in view of the affirmance by this Court of the power of Congress to enact a maritime workmen's compensation act[1] the validity of the general scheme or outline of the legislation is foreclosed.

The question for decision by this Court relates solely to the procedural provisions of the act. It is restricted to whether the Constitution prohibits the Congress from entrusting to an administrative officer power to determine the existence *vel non* of facts within the Act's class or condition. The following remarks deal with that question solely in respect to whether those provisions of the Constitution, vesting in the judicial power of the United States jurisdiction of "all cases of admiralty and maritime jurisdiction," prohibit the Congress from so entrusting that power.

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[1] "Without doubt, Congress has power to alter, amend or revise, the maritime law by statutes of general application embodying its will and judgment. This power, we think, would permit enactment of a general employers' liability law, or general provisions for compensation of employees * * *"

Washington vs Dawson Co., 264 U. S., 219, 227.

Necessarily the Constitution deals in general language.[2] It does not provide for minute specifications of its powers nor declare the means by which those powers should be carried into execution. Its framers could not see the future growth and development of the nation, neither could it be foreseen what new changes and modifications of power might be necessary to effecuate the general objects of the charter. Restrictions and limitations, while proper at the time of the adoption of the Constitution, might in the end proye the overthrow of the system itself. Hence the powers are granted in general terms, leaving to the Congress from time to time to adopt its own means to effectuate legitimate objects, and to mould and model the exercise of those powers, as the wisdom of Congress and public interest might require. Of the powers delineated, those of the judiciary are granted in most general terms.[3] The jurisdiction of all Federal Courts, over vast fields of activity, touching the lives of millions of people, is constitutionally granted in a few short sentences.

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[2]**Martin v. Hunter's Lessee**, 1 Wheaton 304, 326.

[3]**The constitutional grant of judicial power, as here apposite is: "The Congress shall have power * * * to constitute Tribunals inferior to the Supreme Court * * * to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof." (Art. 1, Sec. 8, Cls. 9. 18). "The judicial Power of the United States shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish." (Art. III., Sec. 1.) "The Judicial Power shall extend to all cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and**

Illustrations of the exercise of power by the Congress, held authorized by the admiralty grant, demonstrate that in the past the Legislature has exercised control of the subject-matter under discussion in more vital and far-reaching particulars than we insist it has done by the Act in question.

Upon the adoption of the Constitution, Congress forthwith enacted the original Judiciary Act, granting to the District Courts exclusive original jurisdiction of all civil causes of admiralty and maritime jurisdiction.[4] To that enactment was added a saving clause by virtue of which State Courts have adjudicated numberless

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Treaties made, or which shall be made, under their authority;—to all Cases affecting Ambassadors, other Ministers and Consuls;—to all cases of admiralty and maritime Jurisdiction;—to Controversies between two or more State;—between a State and Citizens of another State;—between citizens of different States;— * * * . In all Cases affecting Ambassadors, other Public Ministers and Consuls, and those in which a State shall be Party, the Supreme Court shall have original jurisdiction. In all the other Cases before mentioned, the Supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such exceptions and under such Regulations as the Congress shall make." (Art. III., Sec. 2).

[redacted]

[4]"That the District Courts shall * * * also have exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction, including all seizures under laws of impost, navigation or trade of the United States, where the seizures are made, on waters which are navigable from the sea by vessels of ten or more tons burden, within their respective districts as well as upon the high seas; saving to suitors, in all cases, the right of a common law remedy, where the common law is competent to give it." Act of September 24, 1789, 1 Stat. 73, 76, 77.

causes of action, arising upon navigable waters or dealing with maritime subjects.

From the opinion of one of the great cases,[5] we find it said that the Congress might rightfully have vested exclusive jurisdiction in its own courts in all cases to which the judicial power extended. Yet by that saving clause, Congress invested the courts of common law, State and Federal, with original cognizance of a great number of causes of action, civil and maritime,[6] which, had Congress willed, would have been exclusively within the powers of the Federal Courts of Admiralty.

In what is perhaps the most celebrated of the great admiralty cases before this Court (*The Propeller Genessee Chief* v. *Fitzhugh*, 12 Howard 443, 459, 460), we find this pronouncement:

> "The power of Congress to change the mode of proceeding in this respect (the right of trial by jury in the admiralty) in its courts of admiralty, will, we suppose, hardly be questioned. The Constitution declares that the judicial power of the United States shall extend to 'all cases of admiralty and maritime jurisdiction.' But it does not direct that the court shall proceed according to ancient and established forms, or shall adopt any other form or mode of practice. The grant defines

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[5] Martin vs Hunter's Lessee, supra, [1 Wheat. 337.]

[6] "By reason of the saving clause (of the Judiciary Act of Sept. 24, 1789, c. 20, Sec. 9, 1 Stat. 73, 77), State Courts have jurisdiction in personam, concurrent with the admiralty courts of all causes of action maritime in their nature arising under charter parties." Red Cross Line vs Atlantic Fruit Co., 264 U. S. 123.

> the subjects to which the jurisdiction may be extended by Congress. But the extent of the power as well as the mode of proceeding in which that jurisdiction is to be exercised, like the power and practice in all the other courts of the United States, are subject to the regulation of Congress, except where that power is limited by the terms of the Constitution, or by necessary implication from its language. In admiralty and maritime cases, there is no such limitations as to the mode of proceeding, and Congress may therefore, in cases of that description, give either party right of trial by jury or modify the practice of the Court in any other respect that it deems more conductive to the administration of justice."

The Genesee Chief and several following cases illustrate the broad power of the Congress in the respect under discussion. The first-named case arose as a proceeding *in rem* on the admiralty side of the United States District Court, under the Act of February 26, 1845, (5 Stat. 726) by reason of a collision upon one of Great Lakes. Jurisdiction was denied because (so the argument ran) the Constitution confined the admiralty jurisdiction to tide waters. By the original Judiciary Act of 1789, jurisdiction in the admiralty was limited to the high seas, and waters navigable therefrom by vessels of ten tons burden and upwards. By the Act of 1846,[7] Congress purported to extend the jurisdiction to the Great Lakes and connecting waters, with restrictions, however, which were not included in the original act. After the *Genesee Chief* sustained the constitutionalty of the Act of 1845, the case of the *Magnolia* (20 Howard 296) arose. In that case it

was contended that inasmuch as the Genesee Chief determined that the Act of 1845[7] conferred a new jurisdiction, which the court did not before possess, and as that act was confined to the lakes, it could not authorize the district courts to assume jurisdiction over the subject-matter of that suit, viz., a collision upon the Alabama River, the navigable portion of which lay wholly within the confines of the State of Alabama. In answering this contention, this Court says, in part, as follows:

> "The Constitution, in defining the powers of the Courts of the United States, extends them to 'all cases of admiralty and maritime jurisdiction.' It defines how much of the judicial power shall be exercised by the Supreme Court only; and it was left to Congress to ordain and establish other courts, and to fix the boundary and extent of their

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7" * * * the District Courts of the United States shall have, possess, and exercise, the same jurisdiction in matters of contract and tort, arising in, upon, or concerning, steam boats and other vessels of twenty tons burden and upwards, enrolled and licensed for the coasting trade, and at the time employed in business of commerce and navigation between ports and place in different States and Territories upon the lakes and navigable waters connecting said lakes, as is now possessed and exercised by the said courts in cases of the like steamboats and other vessels employed in navigation and commerce upon the high seas or tide waters, within the admiralty and maritime jurisdiction of the United States; * * * saving, however, to the parties the right of trial by jury of all facts put in issue in such suits, where either party shall require it; and saving also to the parties the right of a concurrent remedy at the common law, where it is competent to give it, and any concurrent remedy which may be given by the State laws, where such steamer or other vessel is employed in such business of commerce and navigation." Act of February 26, 1845, 5 Stat. 726-7.

> respective jurisdictions. Congress might give any of these courts the whole or so much of the admiralty jurisdiction as it saw fit. It might extend their jurisdiction over all navigable waters, and all ships and vessels thereon, or over some navigable waters, and vessels of a certain description only. Consequently, as Congress had never before 1845 conferred admiralty jurisdiction over the northern fresh water lakes *not* 'navigable from the sea,' the district courts could not assume it by virtue of this clause in the Constitution."
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> *The Steamboat Magnolia,* 20 Howard 296, 300, 301.

The power of Congress, as illustrated by the Act of 1845, to confine the admiralty jurisdiction within narrower limits than are given by the constitutional grant, is reaffirmed in *The Hine* v. *Trevor,* 4 Wallace 555, where it is held that while the admiralty grant by the Act of 1789 is coextensive with the Constitution, as to the character of the waters over which it extends; the Act of 1845 is a limitation of the powers granted by the act of 1789, as regards cases arising upon the lakes, in that the admiralty jurisdiction is there limited to vessels of twenty tons burden and upwards, in the coasting trade, employed in commerce between the States, a jury trial is granted, and the jurisdiction is not exclusive of, but is expressly made concurrent with, state remedies.

Under the Act of 1845, we actually find a case of collision occurring upon navigable waters of the United States, of which the district courts, sitting in admiralty, were without jurisdiction.

Allen v. *Newberry,* 21 Howard 244.

While the Congress was constitutionally empowered

to vest in the Federal Courts jurisdiction greater in extent than was originally vested, it is clear that the lawmaking power acted within constitutional limits in vesting only a part of that power. It also follows that jurisdiction in admiralty and maritime cases may not be exercised by the inferior Federal Courts until Congress acts; the admiralty grant being not self-executing. If the Constitution itself vests admiralty jurisdiction to the limits of the grant in the lower Federal Courts upon their creation by the Congress, that body could not validly vest in those courts only a part of that power. If the admiralty grant is self-executing, upon the creation of the lower Federal Courts by the Congress, those courts are vested with all jurisdiction within the spirit and terms of the grant. Such theories are directly contradictory to the reasoning, language, and conclusions of the cited cases.

The right within the admiralty grant of the Congress to entrust an administrative officer with determinations of fact in maritime cases within the Longshoremen's Act may be made clearer by analogy by reference to other illustrations of the valid exercise by the lawmaking body of power over procedure and practice in admiralty cases. For example, upon the passage of the Judiciary Act of 1789, Congress provided (1 Stat. 93-94), that in the admiralty courts, the forms and modes of proceedings should be according to the course of the civil law. But it became evident that if the admiralty used process *in rem* in all cases in which it was authorized by the civil law, unavoidably collision would be had with the common-law courts of the State, where the parties re-

sided, where the property was situated, and where other than owners might have interests in the property, which they had a right to assert at common law. Therefore, three years later (1792), Congress provided that the forms and mode of procedure should be according to the principles, rules and usages which belong to courts of admiralty, subject to such alterations and additions as the courts themselves might deem expedient, or to such regulations as this Court might from time to time prescribe.[8] Under the rule of this Court of 1844, a proceeding *in rem* was authorized, where the municipal law gave a lien for supplies furnished a vessel in her home port. On May 1, 1859, by this Court, this rule was altered and process *in rem* in those classes of cases denied. *The St. Lawrence,* 1 Black 522, arose as a libel *in rem* in the United States District Court for supplies furnished a vessel in her home port, where a state law gave a lien therefor. The owners contended that as the lien was not created by the maritime law, it could not be enforced in the admiralty; moreover, that the rule of 1859, must be regarded as admitting that by the rule of 1844, this Court had exercised a jurisdiction beyond its legitimate boundary: that if the admiralty was without jurisdiction to enforce a State lien in a case of this kind, a rule could not enlarge its jurisdiction nor authorize a decree of the lower court which supported and enforced the lien. In replying to and overruling this contention, it is held:

"These rules refer exclusively to the charac-

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[8]Act of May 8, 1792, 1 Stat. 275. The power of the Supreme Court to regulate admiralty procedure was enlarged by the Act of August 23, 1842. See The Steamer St. Lawrence, 1 Black 522, 528.

ter of the process to be used in certain cases, and this change has no relation to the question of the jurisdiction of the court.

"* * * Congress may prescribe the forms and modes of proceeding in the tribunals which it establishes, and may authorize the court to proceed by attachment against the property, or by arrest of the person, as it may think best.

"* * * the power of this court to frame rules held to extend to the mode of proceeding and to the process to be used, but not to the subject-matter of the jurisdiction."

The Steamer St. Lawrence, 1 Black 522.[9]

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[9]In this case (Opin. pp 528-29) it is further declared: "The case of The General Smith (4 Wheat. 438 was (*529) decided upon these principles, and the right to proceed against the property regarded as a mere question of process and not of jurisdiction. And the court held that where, upon the principles of the maritime code, the supplies are presumed to be furnished on the credit of the vessel, or where a lien is given by the local law, the party is entitled to proceed in rem in the admiralty court to enforce it; but where the supplies are presumed by the maritime code to be furnished on the personal credit of the owner or master, and the local law gives him no lien, although the contract is maritime, yet he must seek his remedy against the person, and not against the vessel. In either case, the contract is equally within the jurisdiction of a court of admiralty. And it is obvious, from this decision, that the court considered the process in rem or priority given for repairs or supplies to a domestic vessel by the courts of admiralty in those countries where the principles of the civil law have been adopted, as forming no part of the general maritime code, but as local laws, and therefore furnishing no precedent for similar cases where the local law is otherwise; consequently they form no part of the admiralty and maritime jurisdiction conferred on the government of the United States.

The power of the Congress over the substantive maritime law is of the broadest extent. It has been declared in two comparatively recent cases before this Court in this language:

> "Considering our former opinions, it must now be accepted as settled doctrine that in consequence of these provisions (the admiralty grant, Con. Art. III, Sec. 2, Art. I., Sec. 8), Congress has paramount power to fix and determine the maritime law which shall prevail throughout the country."
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> *Southern Pacific Co.* v. *Jensen,* 244 U.S. 205, 215
> *Knickerbocker Ice Co.* v. *Stewart,* 253 U. S. 149, 158.

That power has been exercised at different times and in such manner that the maritime law, as it existed at the time of adoption of the Constitution, has been materially and radically changed.[10]

The sole argument advanced against the power of the Congress to confine the determination of issues of

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[10]For example: Act of June 5, 1920, c. 250, Sec. 33, 41 Stat. 1007 (Jones Act), renders the ship-owning employer liable, at a seaman's option, for damages for personal injury caused by fault of a fellow-servant, for which there was no liability at the general maritime law. (The Osceola, 189 U. S. 158). The Merchant Marine Act of 1920 (Ib. Sec. 30), abolishes the distinction of the general maritime law between the furnishing of supplies, materials, etc., in a vessel's home port, by which law no lien arose, and the furnishing of the same in a foreign port, when a lien was created. By that enactment there is no difference as far as a right to a maritime lien is concerned between furnishing a vessel at home and abroad. The same enactment renders it unnecessary (contrary to the general maritime law) that credit be given to

fact to an administrative officer in admiralty cases is upon this theory: By the terms of the grant, judicial power is vested in the lower Federal Courts as fully, definitely and irrevocably as (in certain cases) it is vested in this Court; the Congress being without power to remove or diminish any part of the jurisdiction so granted. As the argument continues, jurisdiction in the lower courts being vested by the Constitution itself, the power of the legislature is confined merely to establishing the Courts; that the constitutional grant in admiralty and maritime cases is by the terms of that instrument made exclusive; therefore, the Congress could not, by empowering an administrative officer to reach conclusions of fact, binding if supported by adequate or sufficient evidence, deprive the District Courts of that power. The argument necessarily assumes that power to determine the existence *vel non* of facts is the exercise of "judicial power" within the constitutional grant.[11]

While the novelty of a line of reasoning is usually no sound answer; nevertheless, the fact that no such thought

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the vessel. By the same enactment maritime mortgages were created and the rules of the general maritime law respecting priorities between those creditors secured by mortgages and those creditors counting on maritime liens, were materially altered.

[11]The record does not disclose an elaboration of the reasoning of the District Court upon the admiralty-grant question here presented. The District Court in its original opinion (R. 20) referred to a former decision, Farrell vs. Waterman S. S. Co., et al, 286 Fed. 284, and 291 Fed. 604. The District Court, however, elaborated its theory in a supplemental opinion reported as Benson vs. Crowell, Deputy Commissioner, etc., 38 Fed. [2] 306.

has presented itself to the Court or counsel in a long line of admiralty cases, in which untiring efforts were made to develop the entire subject, certainly should at least require very clear support for the point.

But the argument of the lower court is, we think, clearly refuted both upon plain authority and reason.

It is thought that the decision and conclusion of this Court in a case which may fairly be described as leading and controlling in this branch of the law maritime, effectually destroys the soundness of the reasoning of the courts below. In that case[12] a carpenter sustained personal injuries aboard a partially completed vessel lying in navigable waters of the United States, for which he commenced against his employer a libel *in personam* in the admiralty for the recovery of damages for the employer's negligence. At the time there was in effect a State compensation law applicable to libellant's injury. Under that act, libellant was entitled to proceed against an Industrial Accident Fund. The case was before this Court upon questions of law certified by the Circuit Court of Appeals of the Ninth Circuit:

(1) Is there jurisdiction in admiralty because the alleged tort occurred on navigable waters? (2) Is libellant entitled, because of his injury, to proceed in admiralty against respondent for the damages suffered? This Court's conclusions were:

> "Construing the first question as meaning to inquire whether the general admiralty juris-

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[12]Grant Smith-Porter Co. v. Rohde, 257 U. S. 469.

diction extends to a proceeding to recover damages resulting from a tort committed on a vessel in process of construction when lying on navigable waters within a state, we answer, yes.

"Assuming that the second question presents the inquiry whether in the circumstances stated the exclusive features of the Oregon Workmen's Compensation Act would apply and abrogate the right to recover damages in an admiralty court which otherwise would exist, we also answer, yes."

Grant Smith-Porter Co. v. *Rohde,* 257 U. S. 469, 477-8.

It necessarily follows these conclusions that the admiralty jurisdiction may validly be diminished in those cases arising out of matters of mere local concern by the application of State workmen's compensation acts. If, as was found by the court below, the Constitution itself extends the judicial power of the United States to *all* admiralty cases, which power even the Congress is precluded from diminishing, a state could not validly require one in whose favor an admiralty cause of action arises to proceed exclusively in a state tribunal.

The doctrine of Grant-Smith-Porter Co. v. Rohde has been many times reaffirmed.[13] That a State may val-

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[13]It was expressly followed in **Miller's Underwriters** v. **Braud,** 270 U. S., 59, where it is said [p 65]:

"The Act (Compensation Act of the State of Texas) prescribes the only remedy; its exclusive features abrogate the right to resort to the admiralty court which otherwise would exist."

Alabama's Compensation Law was held the exclusive remedy

idly prescribe exclusive remedies in the nature of compensation acts to cases otherwise within the jurisdiction of the District Courts sitting in Admiralty, insofar as matters of mere local concern are involved, may fairly be said to be as well settled as any principle of the admiralty law. The only difficulties which have been encountered in following that case have been in relation to the question of, What are matters of mere local concern?

That the states are not without power to afford a remedy, exclusive in their courts, upon a maritime cause of action is further illustrated by *Red Cross Line* v. *Atlantic Fruit Company* (264 U. S. 109), where a statute of the State of New York authorized its courts to direct, upon application of a party to an agreement to arbitrate, that the arbitration proceed in the manner so provided. The agreement to arbitrate was in that case, contained in a charter party. It is there said:

> "By reason of the saving clause, state courts have jurisdiction *in personam,* concurrent with the admiralty courts, of all causes of action maritime in their nature arising under charter parties (citing the Judiciary Act of Sept. 24, 1789, c. 20, Sec. 9, 1 Stat. 73, 77, and other authorities). The 'right of a common law remedy,' so saved to suitors, does not, * * * include attempted changes by the States in the substantive admiralty law,

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for the widow of a lumber checker dying on navigable waters (Rosengrant v. Havard, 273 U. S. 664). Of the cases following Grant, Smith-Porter v. Rohde, are:

Sultan Ry. v. Dept. of Labor, 277 U. S. 136;

Alaska Packers Assn. v. Industrial Acc. Com. 276 U. S. 467.

> but it does include all means other than proceedings in admiralty which may be employed to enforce the right or to redress the injury involved. * * * A State may not provide a remedy *in rem* for any cause of action within the admiralty jurisdiction. (Citing authority). But otherwise, the State, having concurrent jurisdiction, is free to adopt such remedies, and to attach to them such incidents, as it sees fit."
>
> *Red Cross Line* v. *Atlantic Fruit Co., supra,* pp 123, 4 (264 U. S. 109).

If, under the admiralty grant, the States may constitutionally afford remedies, exclusive in their courts, upon maritime causes of action, to that extent abrogating the power of the inferior Federal Courts to determine possible controversies arising out of the same facts, is it possible to soundly say that Congress itself could not, within those same provisions, provide that an administrative officer should determine the facts, leaving questions of law to the District Courts?

The argument advanced to sustain the conclusions of the lower courts manifestly overlooks that while the constitutional grant of judicial power is to *all* cases, *original* jurisdiction is not specified, as far as the inferior Federal Courts are concerned. If it be reasoned that the admiralty grant contemplated that the federal judicial power might or should embrace cognizance of all maritime causes of action whatsoever, within the admiralty and maritime jurisdiction as accepted in the United States, the language used is not such as to require that this jurisdiction should be exercised in the first instance in every such cause of action. To so require,

would be *contra* to the plain terms of the Constitution itself, it is thought, for manifestly the Constitution contemplated that the State courts should exercise concurrent jurisdiction over some of the cases to which the judicial power extends.[14]

An examination of the power of the Congress, delegated by the Constitution along lines other than the admiralty and maritime grant, seems to support clearly the power of the Congress in the latter field to vest the power of decision of matters of fact in an administrative officer, as is contended by us. By the identical terminology of the admiralty grant of judicial power, the Constitution provides that the same power shall extend "to all cases, in law and equity, arising under this Constitution, the laws of the United States, and Treaties made, or which shall be made, under their authority." The power of the Congress to vest in the State courts exclusive jurisdiction of certain "cases arising under the laws of the United States," as far as original jurisdiction is concerned, may not be doubted. The power to thus exclude from the inferior Federal courts jurisdiction in the first instance of those cases has often been exercised. Of the cases thus excluded, we find examples where prior thereto, under authority of the Congress the judicial power in the first instance of the inferior Federal courts had ex-

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14 "This Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or laws of any State to the Contrary notwithstanding." Constitution Art. VI, paragraph two.

tended thereto, and had actually been exercised by those courts.

Extension of original jurisdiction to the inferior Federal courts over all suits at law or in equity, arising under the Constitution, Laws or Treaties of the United States, was not, broadly speaking, accomplished until 1875,[15] when Congress in express terms gave the Circuit Court original jurisdiction, concurrent with the courts of the States, of all suits of that nature, where the value of the matter in dispute was in excess of $500. By a later act,[16] the jurisdiction of the Circuit Courts was restricted by raising the required amount of the value in controversy to $2,000. When the Circuit Courts were discontinued, the jurisdiction was transferred to the District Courts, but the required amount of the value in controversy was raised to $3,000.[17] Can it be doubted that by the enactment of the Act of 1887 and of the Judicial Code, the inferior Federal Courts were thereby entirely deprived of original jurisdiction over cases arising under the Constitution and Laws of the United States, of which those courts were empowered to take cognizance by the Act of March 3, 1875? Yet the objection of the District Court in the case at bar, in so far as the admiralty-grant-question is concerned, is based solely and necessarily upon the theory that the Congress was without power to

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[15]Act of March 3, 1875, c. 137, Sec. 1, 18 Stat. 470.

Bankers Trust Co. v. Tex. & Pac. Ry., 241 U. S. 295, 305.

Tennessee v. Union and Planters' Bank, 152 U. S. 454, 459.

[16]Act of March 3, 1887, c. 373, Sec. 1, 24 Stat. 552.

[17]Judicial Code, Sec. 24.

deprive the inferior Federal Courts of jurisdiction of cases, where that jurisdiction had already been vested in those courts. If the Congress may rightfully withdraw original cognizance from the inferior Federal Courts of cases within the constitutional grant of judicial power, *a fortiori* that body may withdraw from the District Court determination of questions of fact, but leaving that court with complete power over questions of law!

A concrete example of the withdrawal by Congress of the original jurisdiction of the lower Federal Courts is found in the case of *Bankers Trust Co.* v. *Tex. & Pac. Ry.*, 241 U. S. 295. That was a suit, brought in the District Court, by a trustee against the Texas and Pacific Railway Company, a corporation, incorporated under an Act of Congress. The Railway Company moved to dismiss because of the Act of January 28, 1915 (c. 22, Sec. 5, 38 Stat. 583), providing that no court of the United States should have jurisdiction of any action or suit against any railroad upon the ground that it was incorporated under an Act of Congress. This court directly held (opinion pp 306, 7) that upon the enactment of the Act of March 3, 1875,[18] *supra* (extending the jurisdiction of the Circuit Courts to cases arising under the laws of the United States), jurisdiction was in the lower court, inasmuch as a suit against a corporation, incorporated under an Act of Congress, was a suit arising under the laws of the United States, but that court was without jurisdiction because of the passage of the Act of January 28, 1915, supra. The opinion (pages 306, 7) refers to another line

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[18]Act of March 3, 1875, c. 137, Sec. 1, 18 Stat. 470.

of cases[19] in which national banks were involved, as to which jurisdiction in the Circuit Court was also withdrawn by the Act of July 12, 1882, c. 290, Sec. 4 (22 Stat. 162), placing suits by and against national banks in the same category with suits by and against banks not organized under the laws of the United States.

It has been expressly held that the Judiciary Act of 1887-88 (Act of March 3, 1887, c. 373, 24 Stat. 552, Act of Aug. 13, 1888, c. 866, 25 Stat. 433) was intended to *contract* the jurisdiction of the Federal Courts.[20]

Another concrete example of the restriction of *original* jurisdiction in the lower Federal Courts may be had by reference to the Federal Employers' Liability Act of 1908 (c. 149, Sec. 1, 35 Stat. 65). By the amendment of April 5, 1910 (c. 143, Sec. 1, 36 Stat. 291), the Congress provided that no case arising under that act brought in a State Court, should be removed to a Federal Court. It may not be doubted that prior to 1910, cases arose under that act, brought in State Courts, which were removable under Judicial Code, section 28; and that, therefore, the amendment of 1910 restricted the District Courts of jurisdiction of those cases arising after the effective date of the amendment.

The doctrine is thus declared by this Court:

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[19]Leather Manufacturers' National Bank v. Cooper, 120 U. S. 778, 781.

Continental National Bank v. Buford, 191 U. S. 119, 122.

[20]Hanrick v. Hanrick, 153 U. S. 192;

Joy v. City of St. Louis, 122 Fed. 524, affirmed 201 U. S. 332.

"Only the jurisdiction of the Supreme Court is derived from the Constitution. Every other court created by the general government derives its jurisdiction wholly from the authority of Congress. That body may give, withhold or restrict such jurisdiction at its discretion, provided it be not extended beyond the boundaries fixed by the Constitution."

Kline v. *Burke Construction Company*, 260 U. S. 226, 234.

This expression was criticized by the District Court,[21] because so the argument ran, where the constitutional grant of judicial power extended to *all* cases, Congress was thereby prohibited from limiting that power. Nevertheless, the Constitution extends the judicial power to "all cases, in law and equity, arising under this Constitution, the Laws of the United States," as well as to "all cases of admiralty and maritime jurisdiction." *Bankers Trust Co.* v. *Texas & Pac. Ry.*, (241 U. S. 295), supra, was a case "arsing under the laws of the United States," and while this Court did not say in terms that the jurisdiction of the lower courts was from Congress, rather than directly from the Constitution, nevertheless the holding was directly and necessarily to that effect.[22] And we have not far to search before finding an early case," arising under the laws of the United

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[21] Farrell v. Waterman S. S. Co., 291 Federal 604, 605-610.

[22] The district court, concludes its opinion in Farrell v. Waterman S. S. Corporation, supra, (291 Federal 604, 612), thus:

"None of the cases I have examined, where the Supreme Court has said its jurisdiction was derived directly from the

States," wherein is used language which express the identical thought criticised in the *Burke* case:

> "As regards all courts of the United States inferior to this tribunal, two things are necessary to create jurisdiction, whether original or appellate. The Constitution must have given to the court the capacity to take it, and an act of Congress must have supplied it. Their concurrence is necessary to vest it."
>
> *The Mayor* v. *Cooper,* 6 Wallace 247, 252.

Much reliance is had by the District Court upon the great case of Martin v. Hunter's Lessees, 1 Wheat., 304 (*Farrell* v. *Waterman S. S. Co.,* 291 Fed. 605-609). This case is also cited by the Circuit Court of Appeals to the same end (R. 187). That case arose as a writ of error from the Court of Appeals of Virginia, founded upon the refusal of that court to obey the mandate of this Court requiring a former judgment to be carried into execution. The Virginia Court held that the appellate power of the Supreme Court of the United States did not extend to the State Court under the Constitution; that so much of the 25th section of the original Judiciary Act of 1789, extending the appellate jurisdiction of the Supreme Court to the State Court, was not pursuant to the Constitution; that the proceedings on said former writ of error in this court were therefore *coram non judice;* wherefore the Virginia Court was at liberty to decline this court's mandate. Thus the whole reasoning of this Court was to the

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Constitution, but that of the inferior courts was from the Congress, involved a case where the 'all' was used in the constitutional grant."

point that Congress was constitutionally empowered to vest appellate supervision of the highest court of a State in the Supreme Court of the United States. It is not within the province of this discussion to attempt to analyze the reasoning throughout the opinion.

It is sufficient to point out that that decision turned upon the constitutional exercise by the *Congress* of the power to extend the judicial power of the United States in an *original or appellate* form[23] to every "case" enumerated in the Constitution. We find nothing in that case, authorizing the position that the Constitution itself, upon

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[23]"The judicial power shall extend to all the cases enumerated in the Constitution: As the mode is not limited, it may extend to all such cases, in any form, in which judicial power may be exercised. It may, therefore, extend to them in shape of original or appellate jurisdiction, or both; for there is nothing in the nature of the cases which binds to the exercise of the one in preference to the other.

* * * * * *

"The judicial power is delegated by the Constitution in the most general terms, and may, therefore, be exercised by Congress under every variety of form, of appellate or original jurisdiction."

* * * * * *

"It must, therefore, be conceded that the Constitution not only contemplated, but meant to provide for cases within the scope of the judicial power of the United States, which might yet depend before State tribunals. It was foreseen that in the exercise of their ordinary jurisdiction, state courts would incidentally take cognizance of cases arising under the Constitution, the Laws, and Treaties of the United States. Yet to all these cases the judicial power, by the very terms of the Constitution is to extend. It cannot extend by original jurisdiction if that was already rightfully and exclusively attached in the State courts, which (as has been already shown) may occur; it must therefore extend by appellate jurisdiction, or not at all. It would seem to

the establishment of the lower courts, vests jurisdiction therein of all those "cases;" neither are the principles and reasoning of that case contrary to the authorities hereinbefore referred to. Upon the contrary, reasoning from *Martin* v. *Hunter's Lessees*, tends, we think, to support our position: The jurisdiction of this Court in that case was supported as a "case" arising under a "treaty made" (Constitution, Art. III, Sec. 2), under authority

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follow that the appellate power of the United States must, in such cases, extend to State tribunals; and if in such cases, there is no reason why it should not equally attach upon all others within the purview of the Constitution."

* * * * * *

"This power of removal is not to be found in express terms in any part of the Constitution; if it be given, it is only given by implication, as a power necessary and proper to carry into effect some express power. The power of removal is certainly not, in strictness of language; it presupposes an exercise of original jurisdiction to have attached elsewhere. The existence of this power of removal is familiar in courts acting according to the course of the common law in criminal as well as civil cases, and it is exercised before as well as after judgment. But this is always deemed in both cases an exercise of appellate, and not of original jurisdiction. If then the right of removal be included in the appellate jurisdiction, it is only because it is one mode of exercising that power, and as Congress is not limited by the Constitution to any particular mode, or time of exercising it, it may authorize a removal either before or after judgment." **Martin v. Hunter's Lessee**, 1 Wheat. 333, 338, 342, 349.

"In those cases in which original jurisdiction is given to the Supreme Court, the judicial power of the United States cannot be exercised in its appellate form. In every other case the power is to be exercised in its original or appellate form or both, as the wisdom of Congress may direct." **Osborn v. Bank**, 9 Wheaton, at page 820 (opinion by Chief Justice Marshall).

of the United States. That case, however, arose in a *State* Court, the judicial power of the United States not arising until *after* jurisdiction had been finally exercised by the highest State appellate tribunal. The Constitution itself extends the judicial power to "all cases" arising under a treaty in precisely the same terminology as it does to "all cases of admiralty and maritime jurisdiction." No valid distinction between the two classes of cases appears! Original jurisdiction was at that time exclusively vested in a State court in that case. If original jurisdiction may be vested in a *State Court* in a "case" arising under a treaty, upon what sound ground can it be said that Congress may not constitutionally invest an administrative officer with the power to originally determine facts in a "case" within the admiralty-and-maritime-jurisdiction grant, where the lower Federal Court is vested with exclusive original jurisdiction to determine all questions of law?

It is necessarily corrollary to the theory of the District Court, upon which its conclusion was based, that the jurisdiction of the lower Federal Courts in admiralty cases, was by the Constitution made *exclusive*. It says: "When exclusive jurisdiction is given by the Constitution, the Congress cannot limit or restrict this jurisdiction (*Farrell* v. *Waterman Steamship Co., supra,* 291 Federal 604, 612)." The Circuit Court of Appeals (R. 187) says: "The claimant's injury having been sustained while he was on a vessel afloat in navigable waters, where he then was for the purpose of rendering a maritime

service, the claim for compensation was within the admiralty jurisdiction, which jurisdiction is vested exclusively in constitutional Federal Courts, not in legislative courts or tribunals, or in any executive official." Both courts cite *Southern Pacific Co.* v. *Jensen* (244 U. S. 205), *Northern Coal & Dock Co.* v. *Strand* (278 U. S. 142), *Panama* v. *Vasquez* (271 U. S. 557), in support of these statements. But those cases did not turn upon the point that cognizance of maritime causes of action are exclusively vested, by the Constitution, in the lower Federal Courts.[24] Upon the contrary, it is settled that the State Courts have jurisdiction, concurrent with the District

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[24]These cases and those following turned upon the exclusion of the states by the Constitution from changing the substantive maritime law in its characteristic features, thereby destroying its uniformity and harmony in its international and interstate relations. The power of the Congress itself to legislate in the maritime field is expressly recognized:

> Under the admiralty grant in the Constitution "Congress has paramount power to fix and determine the maritime law which shall prevail throughout the country."
>
> "In the absence of controlling statutes, the general maritime law as accepted by the Federal Courts constitutes part of our national law applicable to matters within the admiralty and maritime jurisdiction."
>
> "The power of the States to change, modify or affect the general maritime law, while existing to some extent under the Constitution and the Judiciary Act of 1789, Sec. 9, Judicial Code, Secs. 24, 256, may not contravene the essential purposes of an Act of Congress, work material prejudice to the characteristic features of the general maritime law or interfere with the proper harmony and uniformity of that law in its international and interstate relations." **Southern Pacific**

Courts, sitting in admiralty, to enforce maritime causes of action, as long as the remedy used is a "common law remedy."[25] It is the substantive maritime law that cannot be changed or altered, in its interstate and international relations; neither can the State grant a remedy *in rem* (according to the course of admiralty proceedings.) But otherwise, as has been pointed out, even the States are free, absent congressional action. The word "exclusive" is not used in the constitutional grant, but in the Judiciary Act. The words "exclusive admiralty jurisdiction" as used by this Court, do not, in all instances, refer to exercise of jurisdiction by the lower Federal Courts, but to the authority of the general government to regulate the maritime law both as to enactment and

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v. Jensen, supra, p 206, 214-217. London Co. v. Industrial Commission (279 U. S. 109), Baisley Iron Works v. Span (281 U.S. 222), and Washington v. Dawson (264 U. S. 213), reaffirmed these doctrines.

But this line of cases are entirely in harmony with Grant, Smith-Porter Co. v. Rohde, supra, and cases following, where it is expressly recognized that while the national Government is vested with paramount and exclusive power over the general maritime law in its characteristic features, necessary to uniformity throughout the country, nevertheless, until Congress acts, the state may regulate matters of mere local concern.

[25] Messel v. Foundation Co., 274 U. S., 427, 432, 434, affirmed the right of a ship repairer injured on navigable waters to recover damages of his employer in an action under the Jones Merchant Marine Act in a State Court proceeding at Law. To the same effect are:

International Stevedore Co. v. Haverty, 272 U. S., 50.

Jamison et al, Executors, v. Encarnacion, 281 U. S., 635.

"A proceeding against the res on a maritime cause of action is

interpretation, exclusive in so far as the general outlines and features of that law are concerned, and paramount in other particulars.

The point of this discussion may be aptly summarised and conclusively determined in the language of this Court:

> "It must be admitted, that if the Constitution had ordained and established the inferior courts, and distributed to them their respective powers, they could not be restricted or divested by Congress. But as it has made no such distribution, one or two consequences must result,—either that each inferior court created by Congress must exercise all the judicial powers not given to the Supreme Court, or that Congress, having the power to establish the courts, must define their respective jurisdictions. The first of these infer-

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exclusively cognizable upon the admiralty side of the United States Courts."

The Moses Taylor, 4 Wallace, 411.

The Belfast, 7 Wallace, 624.

But the one in whose favor a maritime cause of action arises, is not limited to an action in rem. Wherever a maritime lien arises, the injured party may pursue his remedy, whether for a breach of maritime contract or for a marine tort, by a suit in rem, or by a suit in personam, at his election.

The Belfast, supra, 642.

And the in personam remedy may be pursued at law in the State Court or upon the law side of the United States Court, as well as on the admiralty side of the latter.

Steamboat Co. v. Chase, 16 Wallace, 522. 533.

ences has never been asserted, and could not be defended with any show of reason, and if not, the latter would seem to follow as a necessary consequence. And it would seem to follow, also, that, having a right to prescribe, Congress may withhold from any court of its creation jurisdiction of any of the enumerated controversies. Courts created by statute can have no jurisdiction but such as the statute confers. No one of them can assert a just claim to jurisdiction exclusively conferred on another, or withheld from all.

The Constitution has defined the limits of the judicial power of the United States, but has not prescribed how much of it shall be exercised by the circuit court; consequently, the statute which does prescribe the limits of their jurisdiction, cannot be in conflict with the Constitution, unless it confers powers not enumerated therein.

Such has been the doctrine held by this Court since first establishment. To enumerate all the cases in which it has been either directly advanced or tacitly assumed, would be tedious and unnecessary."

Sheldon v. *Sill*, 8 Howard 441, 448-9.

CONCLUSION

From the reasoning and authorities of the learned brief and argument, presented on behalf of the United States by the Solicitor-General, it clearly appears, we think, that had the question here presented arose in other fields of Congressional legislation, the question, respecting Congress' right to restrict issues of fact to administrative officers, and the law-making body having so pro-

vided by the Act under review, answers itself. If, as we have endeavored to make clear, Congress has equal power, within the admiralty grant, as in other fields, it seems to necessarily follow that under the Longshoreman's and Harbor Workers' Compensation Act there is no right of trial *de novo* in the District Court of issues of fact determined by the Deputy Commissioner.

Respectfully submitted,

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